

Senate File 401

PAG LIN

SENATE FILE 401

1 1
1 2
1 3 AN ACT
1 4 RELATING TO TOBACCO RETAILERS AND PROVIDING PENALTIES AND
1 5 PROVIDING APPLICABILITY PROVISIONS AND AN EFFECTIVE DATE.
1 6
1 7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 8
1 9 Section 1. Section 453A.2, Code 2003, is amended by adding
1 10 the following new subsection:
1 11 NEW SUBSECTION. 5A. If a county health department, a city
1 12 health department, or a city has not assessed a penalty
1 13 pursuant to section 453A.22, subsection 2, for a violation of
1 14 subsection 1, within sixty days of the adjudication of the
1 15 violation, the matter shall be transferred to and be the
1 16 exclusive responsibility of the Iowa department of public
1 17 health. Following transfer of the matter, if the violation is
1 18 contested, the Iowa department of public health shall request
1 19 an administrative hearing before an administrative law judge,
1 20 assigned by the division of administrative hearings of the
1 21 department of inspections and appeals in accordance with the
1 22 provisions of section 10A.801, to adjudicate the matter
1 23 pursuant to chapter 17A.
1 24 Sec. 2. NEW SECTION. 453A.2A TOBACCO COMPLIANCE EMPLOYEE
1 25 TRAINING PROGRAM.
1 26 1. The alcoholic beverages division of the department of
1 27 commerce shall develop a tobacco compliance employee training
1 28 program not to exceed two hours in length for employees and
1 29 prospective employees of tobacco retailers to inform the
1 30 employees about state and federal laws and regulations
1 31 regarding the sale of cigarettes and tobacco products to
1 32 persons under eighteen years of age and compliance with and
1 33 the importance of laws regarding the sale of cigarettes and
1 34 tobacco products to persons under eighteen years of age.
1 35 2. The tobacco compliance employee training program shall
2 1 be made available to employees and prospective employees of
2 2 tobacco retailers at no cost to the employee, the prospective
2 3 employee, or the retailer, and in a manner which is as
2 4 convenient and accessible to the extent practicable throughout
2 5 the state so as to encourage attendance. Contingent upon the
2 6 availability of specified funds for provision of the program,
2 7 the division shall schedule the program on at least a monthly
2 8 basis and the program shall be available at a location in at
2 9 least a majority of counties.
2 10 3. Upon completion of the tobacco compliance employee
2 11 training program, an employee or prospective employee shall
2 12 receive a certificate of completion, which shall be valid for
2 13 a period of two years, unless the employee or prospective
2 14 employee is convicted of a violation of section 453A.2,
2 15 subsection 1, in which case the certificate shall be void.
2 16 4. The tobacco compliance employee training program shall
2 17 also offer periodic continuing employee training and
2 18 recertification for employees who have completed initial
2 19 training and received certificates of completion.
2 20 Sec. 3. Section 453A.22, subsection 2, Code 2003, is
2 21 amended to read as follows:
2 22 2. If a retailer or employee of a retailer has violated
2 23 section 453A.2 or section 453A.36, subsection 6, the
2 24 department or local authority, or the Iowa department of
2 25 public health following transfer of the matter to the Iowa
2 26 department of public health pursuant to section 453A.2,
2 27 subsection 5A, in addition to the other penalties fixed for
2 28 such violations in this section, shall assess a penalty upon
2 29 the same hearing and notice as prescribed in subsection 1 as
2 30 follows:
2 31 a. For a first violation, the retailer shall be assessed a
2 32 civil penalty in the amount of three hundred dollars. Failure
2 33 to pay the civil penalty as ordered under this subsection
2 34 shall result in automatic suspension of the permit for a
2 35 period of fourteen days.
3 1 b. For a second violation within a period of two years,
3 2 the retailer shall be assessed a civil penalty in the amount
3 3 of one thousand five hundred dollars or the retailer's permit
3 4 shall be suspended for a period of thirty days. The retailer
3 5 may select its preference in the penalty to be applied under

3 6 this paragraph.

3 7 c. For a third violation within a period of three years,
3 8 the retailer shall be assessed a civil penalty in the amount
3 9 of one thousand five hundred dollars and the retailer's permit

3 10 shall be suspended for a period of ~~sixty~~ thirty days.

3 11 d. For a fourth violation within a period of three years,
3 12 the retailer shall be assessed a civil penalty in the amount
3 13 of one thousand five hundred dollars and the retailer's permit

3 14 shall be ~~revoked~~ suspended for a period of sixty days.

3 15 e. For a fifth violation within a period of four years,
3 16 the retailer's permit shall be revoked.

3 17 Sec. 4. Section 453A.22, Code 2003, is amended by adding
3 18 the following new subsections:

3 19 NEW SUBSECTION. 2A. If an employee of a retailer violates
3 20 section 453A.2, subsection 1, the retailer shall not be
3 21 assessed a penalty under subsection 2, and the violation shall
3 22 be deemed not to be a violation of section 453A.2, subsection
3 23 1, for the purpose of determining the number of violations for
3 24 which a penalty may be assessed pursuant to subsection 2, if
3 25 the employee holds a valid certificate of completion of the
3 26 tobacco compliance employee training program pursuant to
3 27 section 453A.2A at the time of the violation. A retailer may
3 28 assert only once in a four-year period the bar under either
3 29 this subsection or subsection 2B against assessment of a
3 30 penalty pursuant to subsection 2, for a violation of section
3 31 453A.2, that takes place at the same place of business
3 32 location.

3 33 NEW SUBSECTION. 2B. If an employee of a retailer violates
3 34 section 453A.2, subsection 1, the retailer shall not be
3 35 assessed a penalty under subsection 2, and the violation shall
4 1 be deemed not to be a violation of section 453A.2, subsection
4 2 1, for the purpose of determining the number of violations for
4 3 which a penalty may be assessed pursuant to subsection 2, if
4 4 the retailer provides written documentation that the employee
4 5 of the retailer has completed an in-house tobacco compliance
4 6 employee training program or a tobacco compliance employee
4 7 training program which is substantially similar to the I
4 8 Pledge program which is approximately one hour in length as
4 9 developed by the alcoholic beverages division of the
4 10 department of commerce. A retailer may assert only once in a
4 11 four-year period the bar under this subsection against
4 12 assessment of a penalty pursuant to subsection 2, for a
4 13 violation of section 453A.2, that takes place at the same
4 14 place of business location.

4 15 Sec. 5. APPLICABILITY PROVISIONS.

4 16 1. Notwithstanding any provision of law to the contrary,
4 17 the section of this Act creating section 453A.2, subsection
4 18 5A, is applicable to violations pending on the effective date
4 19 of this Act for which a penalty has not been assessed under
4 20 section 453A.22, subsection 2.

4 21 2. Notwithstanding section 453A.22, subsection 2, Code
4 22 2003, the section of this Act amending section 453A.22,
4 23 subsection 2, is applicable to each violation of section
4 24 453A.2, subsection 1, by a retailer or an employee of a
4 25 retailer which is pending on the effective date of this Act
4 26 and for which a penalty has not been assessed under section
4 27 453A.22, subsection 2, Code 2003.

4 28 Sec. 6. Section 453A.22, subsection 2B, as enacted by this
4 29 Act, is repealed one year from the effective date of this Act.

4 30 Sec. 7. EFFECTIVE DATE. This Act, being deemed of
4 31 immediate importance, takes effect upon enactment.

4 32

4 33

4 34

4 35

MARY E. KRAMER
President of the Senate

5 1

5 2

5 3

5 4

CHRISTOPHER C. RANTS
Speaker of the House

5 5

5 6

5 7

5 8 I hereby certify that this bill originated in the Senate and
5 9 is known as Senate File 401, Eightieth General Assembly.

5 10

5 11

5 12

MICHAEL E. MARSHALL
Secretary of the Senate

5 13

5 14

5 15 Approved _____, 2003

5 16

5 17

5 18

5 19 THOMAS J. VILSACK

5 20 Governor